

REMARKS

Claims 1, 9, and 12 are amended, no claims are canceled, and no claims are added; as a result, claims 1-12 are now pending in this application.

No new subject matter has been added by the amendments to claims 1, 9, and 12. Support for the amendments to claim 1 can be found in, but not necessarily limited to, the specification of the application at page 1, line 15. Support for the amendments to claim 12 can be found in, but is not necessarily limited to, the specification on page 12 at lines 17-18.

Claim 9 was amended merely to correct a typographical error to change a capital “W” in the word “wherein” to be a small “w” in the claim.

The Rejection of Claims Under § 101

Claims 1-8 and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The rejection of claims 1-8 and 12 is respectfully traversed.

Claims 1-8 and 12, at least as now amended, include statutory subject matter under 35 U.S.C. 101. By way of illustration, independent claim 1, as now amended, includes “receiving the data stream at a port.” In a further illustration, independent claim 12, as now amended, includes “modulating the data stream at a transmitter.”

It is respectfully submitted that both independent claim 1 and independent claim 12 positively recite a particular machine to which the claim is tied and, therefore, meet the requirements of 35 U.S.C. 101. Claims 2-8 depend from independent claim 1 and, so far at least the reasons stated above with respect to independent claim 1, also meet the requirements of 35 U.S.C. 101.

Reconsideration and withdrawal of the rejection, and allowance of all claims now pending in the application, is respectfully requested.

Allowable Subject Matter

Claims 9-11 are allowed. The allowance of claims 9-11 is respectfully acknowledged.

As noted above, the Office Action indicates that claims 1-8 and 12 would be allowable if amended to overcome the rejection under 35 U.S.C. 101. For at least the reasons stated above, it

is respectfully submitted that claims 1-8 and 12, at least as now amended, overcome the rejection under 35 U.S.C. 101, and therefore are also allowable as now pending in the application.

Reservation of Rights

In the interest of clarity and brevity, every assertion made in the Office Action may not have been addressed. Silence regarding any such assertion does not constitute any admission or acquiescence. All rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference, are reserved. It is not admitted that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, timely objection to such reliance on Official Notice is made, and all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03, are reserved. All rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04, are likewise reserved.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at (612) 371-2132 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of March, 2010.

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